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Superior Court of California, County of San Francisco
Case No. CGC 00 310481
Carolina Casualty Vs The Scott Companies

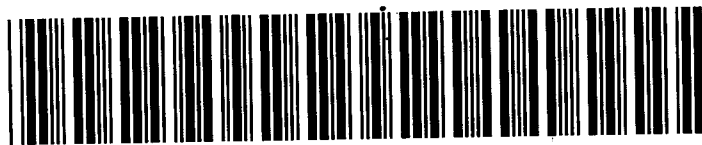
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Case Number: CGC-00-310481

Filing Date: Oct-05-2004 2:30

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ANSWER

CAROLINA CASUALTY VS THE SCOTT COMPANIES

001C01056644

Instructions:

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FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

OCT 05 2004

GORDON PARK-LI, Clerk
BY: [Signature] Deputy Clerk

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

11 CAROLINA CASUALTY INSURANCE
12 COMPANY,

13 Plaintiff,

14 vs.

15 THE SCOTT COMPANIES, et al.,

16 Defendants.

CASE No. CGC-00-310481

**ANSWER OF PLAINTIFF/CROSS-
DEFENDANT CAROLINA CASUALTY TO
UNVERIFIED CROSS-COMPLAINT**

Complaint Filed: August 11, 2000
Trial Date: Not Set
Disc. Cutoff: Not Set

17 THE SCOTT COMPANIES, INC., SCOTT
18 COMPANIES OF CALIFORNIA,
19 SCOTT-NORMAN MECHANICAL,
20 INC., JOSEPH GUGLIELMO, ROBERT
21 NURISSE, RICHARD DAVIS,

22 Cross-Complainants,

23 vs.

24 CAROLINA CASUALTY INSURANCE
25 COMPANY,

26 Cross-Defendant.

27 In answer to the unverified cross-complaint of cross-complainants THE SCOTT
28 COMPANIES, INC., SCOTT COMPANY OF CALIFORNIA, SCOTT-NORMAN
MECHANICAL, INC., JOSEPH GUGLIELMO, ROBERT NURISSE, and RICHARD DAVIS,
for breach of contract and breach of the covenant of good faith and fair dealing, plaintiff and

1 cross-defendant CAROLINA CASUALTY INSURANCE COMPANY denies and alleges as
2 follows:

3 Pursuant to the provisions of Section 431.30 of the California Code of Civil Procedure,
4 cross-defendant CAROLINA CASUALTY INSURANCE COMPANY denies generally
5 specifically each and every allegation in the unverified cross-complaint, and the whole thereof
6 and further denies that cross-complainants, or any of them, are entitled to general damages, to
7 special damages, to exemplary or punitive damages, to attorney fees, to costs, or to any other
8 relief.

9 **FIRST AFFIRMATIVE DEFENSE**

10 **(Failure to State a Cause of Action)**

11 Cross-complainants, and each of them, have failed to state facts sufficient to constitute a
12 cause of action against CAROLINA CASUALTY INSURANCE COMPANY.

13 **SECOND AFFIRMATIVE DEFENSE**

14 **(Estoppel)**

15 Cross-complainants, and each of them, are estopped by his and their own conduct from
16 obtaining any relief against CAROLINA CASUALTY INSURANCE COMPANY and from
17 prevailing on any claims that cross-complainants, or any of them, might otherwise have had
18 against CAROLINA CASUALTY INSURANCE COMPANY.

19 **THIRD AFFIRMATIVE DEFENSE**

20 **(Waiver)**

21 Cross-complainants, and each of them, by the conduct of each of them, waived any claims
22 said cross-complainants might otherwise have maintained against CAROLINA CASUALTY
23 INSURANCE COMPANY.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 **(Unclean Hands)**

26 Cross-complainants, and each of them, are barred by virtue of cross-complainants' own
27 conduct, under the doctrine of unclean heads, from recovering on any claim cross-complainants
28

1 might otherwise have maintained against CAROLINA CASUALTY INSURANCE COMPANY.

2 **FIFTH AFFIRMATIVE DEFENSE**

3 **(Fault of Others)**

4 Any damages sustained by cross-complainants, or any of them, were either fully or in part
5 the fault of others, whether that fault be the proximate result of negligence, strict liability, breach
6 of warranty, breach of contract, or any other type of fault caused by persons, firms, corporations
7 or entities other than this answering cross-defendant and that said negligence or fault
8 comparatively reduces the percentage of fault or negligence, if any, by this answering cross-
9 defendant.

10 **SIXTH AFFIRMATIVE DEFENSE**

11 **(Lack of Privity)**

12 Cross-complainants SCOTT COMPANY OF CALIFORNIA, NORMAN
13 MECHANICAL, INC., JOSEPH GUGLIELMO, ROBERT NURISSO, and RICHARD DAVIS,
14 are barred from recovery against this answering cross-defendant because said cross-complainants
15 were not in contractual privity with this cross-defendant.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 **(Lack of Standing)**

18 Cross-complainants SCOTT COMPANY OF CALIFORNIA, NORMAN
19 MECHANICAL, INC., JOSEPH GUGLIELMO, ROBERT NURISSO, and RICHARD DAVIS,
20 lack standing to assert claims, because both were unknown to this answering cross-defendant and
21 neither of them was a foreseeable plaintiff in any action arising from the alleged facts.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 **(Acts of Other Cross-Defendants Are Attributable to Cross-Complainants)**

24 Cross-complainants, and each of them, are barred from recovering on the cross-complaint
25 and each cause of action thereof, because cross-complainants themselves caused the wrongful
26 acts alleged in the cross-complaint, by their own acts and omissions and through the acts and
27 omissions of their agents, the other defendants and cross-defendants in this action.
28

1 **NINTH AFFIRMATIVE DEFENSE**

2 **(Representations Made True)**

3 This answering cross-defendant believes to be true the representations, if any, made by or
4 on its behalf to cross-complainants.

5 **TENTH AFFIRMATIVE DEFENSE**

6 **(No Facts Were Suppressed)**

7 This answering cross-defendant suppressed no facts or representations which it was bound
8 to disclose, and gave no information or other facts which were likely to mislead.

9 **ELEVENTH AFFIRMATIVE DEFENSE**

10 **(No Deceit Was Practiced)**

11 This answering cross-defendant practiced no deceit upon cross-complainants, or any of
12 them, and did not defraud or oppress cross-complainants, or any of them, by making any
13 representations complained of by cross-complainants or by making any actual representations to
14 cross-complainants, to any of them, or to any other person or entity.

15 **TWELFTH AFFIRMATIVE DEFENSE**

16 **(No Justifiable Reliance)**

17 With respect to the acts, omissions, and other conduct complained of by cross-
18 complainants, and with respect to the resulting actions taken, or other actions not taken by cross-
19 complainants, there does and did not exist any justifiable reliance by cross-complainants, or any
20 of them.

21 **THIRTEENTH AFFIRMATIVE DEFENSE**

22 **(Exemplary or Punitive Damages)**

23 The cross-complaint, and each alleged cause of action thereof, fails to state facts upon
24 which to support a claim of exemplary or punitive damages.

25 **FOURTEENTH AFFIRMATIVE DEFENSE**

26 **(Cross-Complainants Consented to Alleged Actions or Omissions)**

27 Cross-complainants, and each of them, consented to the actions or omissions complained
28

1 of in the cross-complaint and attributed to this cross-defendant, and therefore cross-complainants
2 cannot complain of the damages resulting from said alleged actions or omissions of this cross-
3 defendant.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 **(Misconduct by Cross-Complainants)**

6 This answering cross-defendant is informed and believes and thereon alleges that cross-
7 complainants, and each of them, were guilty of willful misconduct in and about the matters
8 complained of, and that the aforesaid misconduct on the part of cross-complainants, and each of
9 them, proximately contributed to the happening of the events complained of and the damages, if
10 any, sustained therefrom.

11 **SIXTEENTH AFFIRMATIVE DEFENSE**

12 **(No Knowledge of Alleged Falsity)**

13 This answering cross-defendant had no knowledge of the alleged falsity of any
14 representations complained of by cross-complainants.

15 **SEVENTEENTH AFFIRMATIVE DEFENSE**

16 **(Facts Are Insufficient to Establish Bad Faith)**

17 The cross-complaint fails to state facts sufficient to constitute a cause of action against
18 this cross-defendant for breach of the implied contract covenant of good faith and fair dealing.

19 **EIGHTEENTH AFFIRMATIVE DEFENSE**

20 **(The Doctrine of Laches Bars the Causes of Action)**

21 Cross-complainants unreasonably delayed in bringing his action against cross-defendant
22 and that such delay prejudiced this cross-defendant, and, therefore, this cross-complaint against
23 this cross-defendant is barred by the doctrine of laches.

24 **NINETEENTH AFFIRMATIVE DEFENSE**

25 **(Statutes of Limitations Bars the Causes of Action)**

26 Cross-complainants are barred from bringing this action by the statutes of limitations
27 stated in Part 2, Title 2, Chapter 3, of the California Code of Civil Procedure beginning with
28

1 Section 335, and continuing through Section 349.4 and, more particularly, but not limited to,
2 Sections 337, 338, 339, 340, and 343.

3 **TWENTIETH AFFIRMATIVE DEFENSE**

4 **(Failure to Perform Necessary Covenants)**

5 Cross-complainants failed to meet and perform all necessary covenants, conditions,
6 conditions precedent, and promises that were required of each and all of them to be performed in
7 accordance with the terms and conditions of the insurance contract.

8 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

9 **(Cross-complainants Breached the Insurance Contract)**

10 Cross-complainants themselves breached the contract that is the subject of the cross-
11 complaint, relieving CAROLINA CASUALTY INSURANCE COMPANY of any and all
12 contract obligations thereunder.

13 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

14 **(Cross-complainants Consented to All Alleged Actions and Omissions)**

15 Cross-complainants consented to the actions or omissions that the cross-complaint alleges
16 were performed or omitted by CAROLINA CASUALTY INSURANCE COMPANY and/or any
17 persons or entities acting on its behalf, and therefore Cross-complainants cannot complain of the
18 damages allegedly resulting from said alleged acts or omissions.

19 **TWENTY-THIRDAFFIRMATIVE DEFENSE**

20 **(Cross-complainants Are Estopped by Their Own Acts and Omissions)**

21 Cross-complainants are equitably estopped from asserting the claims set forth in the cross-
22 complaint by reason of their own acts and omissions.

23 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

24 **(The Insurance Contracts at Issue Provided No Coverage)**

25 The insurance contracts at issue provided no insurance coverage and no defense obligation
26 for the Civil Action alleged at paragraph 6 of the cross-complaint and/or for the Criminal Action
27 alleged at paragraph 11 of the cross-complaint, or for any related proceedings, and Cross-
28

complainants were entitled to no benefits under the insurance contracts at issue with respect to either the Criminal Action or the Civil Action.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Insurance Contract Exclusions Barred Coverage)

Exclusions set forth in the insurance contracts at issue barred coverage for all of the allegations of the Civil Action alleged at paragraph 6 of the cross-complaint and/or the Criminal Action alleged at paragraph 11 of the cross-complaint, and Cross-complainants were therefore entitled to no benefits under the insurance contracts at issue with respect to either the Criminal Action or the Civil Action.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Carolina Casualty Insurance Company Met All Contract Obligations)

CAROLINA CASUALTY INSURANCE COMPANY met all obligations under the insurance contracts that are the subject of the cross-complaint.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Cross-complainants Consented to All Alleged Actions and Omissions)

Cross-complainants have failed to mitigate their damages. Accordingly, Cross-complainants' claim for damages is barred or reduced in part to the extent that Cross-complainants' damages were caused by Cross-complainants' own failure to mitigate.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Cross-complainants Are Not Entitled to Punitive Damages)

Cross-complainants are not entitled to recover punitive damages from defendant because any award of punitive damage would violate defendant's rights under California Constitution, Article I, Sections 1, 7, 9, 15 and 17.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Cross-complainants Are Not Entitled to Punitive Damages)

The cross-complaint fails to state facts sufficient to support an award of attorneys' fees, costs, and expenses against CAROLINA CASUALTY INSURANCE COMPANY.

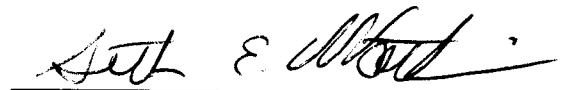
1 WHEREFORE, cross-defendant CALIFORNIA CAPITAL INSURANCE COMPANY
2 prays that:

- 3 1. Cross-complainants recover nothing on the cross-complaint and that judgment be
4 entered for this answering cross-defendant;
5 2. This answering cross-defendant be awarded its costs of suit and attorney fees
6 incurred in defending this action; and
7 3. The Court grant such other and further relief as it deems just and proper.
8

9 Dated: October 4, 2004

LONG & LEVIT LLP

11 By



HOWARD M. GARFIELD
SETH E. WATKINS
Attorneys for Plaintiff and Cross-
Defendant CAROLINA CASUALTY
INSURANCE COMPANY

16 DOCS\1705-021\486454.V1

PROOF OF SERVICE

I am employed in the City and County of San Francisco, California. I am over the age of 18 years and not a party to the within action. My business address is Long & Levit LLP, 465 California Street, Suite 500, San Francisco, CA 94104.

On October 4, 2004, I served the document(s) named below on the following attorney(s) of record and/or interested parties in the case of *Carolina Casualty Insurance Company v. The Scott Companies, et al.*, Superior Court of California, County of San Francisco Case No. CGC-00-310481

ANSWER OF PLAINTIFF/CROSS-DEFENDANT CAROLINA CASUALTY TO UNVERIFIED CROSS-COMPLAINT

SERVED UPON:

Attys for Defendants The Scott Companies, et al.:

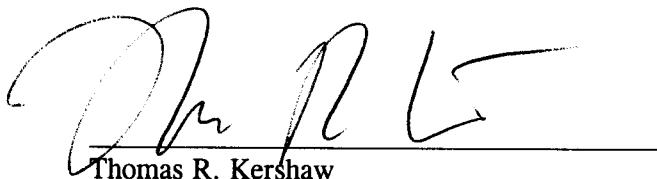
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- ☒ (BY MAIL) I am readily familiar with Long & Levit LLP's practice for collection and processing of documents for mailing with the United States Postal Service. I caused such document(s) to be placed in a sealed envelope, addressed to the person(s) on whom it is to be delivered pursuant to the attached service list, with postage thereon fully prepaid, to be deposited with the United States mail at San Francisco, California, that same day in the ordinary course of business.
- ☐ (BY OVERNIGHT MAIL) I am readily familiar with Long & Levit LLP's practice for collection and processing of documents for mailing via overnight delivery. I caused such document(s) to be placed in a sealed envelope designated by the overnight service carrier, addressed to the person(s) on whom it is to be served pursuant to the attached service list, and deposited said envelope in a box or other facility regularly maintained by the overnight service carrier with delivery fees paid or provided for.
- ☐ (BY FACSIMILE) I caused the document(s) described herein to be transmitted from facsimile number (415) 397-6392 to the facsimile number(s) for each party indicated above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 4, 2004, at San Francisco, California.



Thomas R. Kershaw